

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ZUBADA KHAN,

Defendant-Appellant.

UNPUBLISHED

October 26, 2001

No. 224303

Wayne Circuit Court

LC No. 99-003891

Before: Holbrook, Jr., P.J., and Cavanagh and R. S. Gribbs*, JJ.

PER CURIAM.

Defendant appeals as of right from her jury trial conviction for negligent homicide, MCL 750.324. We affirm.

Defendant first argues that the evidence was insufficient to prove that her conduct met the ordinary negligence standard required by the negligent homicide statute. We disagree. In a sufficiency claim, this Court considers the evidence in a light most favorable to the prosecutor to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. See *People v Nowack*, 462 Mich 392, 399-400; 614 NW2d 78 (2000).

Negligent homicide requires proof that (1) the defendant was operating a motor vehicle, (2) the defendant was operating the vehicle at an unreasonable speed or in a negligent manner, (3) the defendant's negligence was a substantial cause of an accident resulting in injuries to the victim, and (4) those injuries caused the victim's death. See MCL 750.324; *People v Tims*, 449 Mich 83, 95, 99, 103-104; 534 NW2d 675 (1995); *People v Paulen*, 327 Mich 94, 99; 41 NW2d 488 (1950). The statute renders deaths caused by the operation of motor vehicles criminal on proof of ordinary negligence only. See MCL 750.324; *People v Abramczyk*, 163 Mich App 473, 478; 415 NW2d 249 (1987). Ordinary negligence is failing to take reasonable care under the circumstances. See *People v Traugher*, 432 Mich 208, 217; 439 NW2d 231 (1989).

Defendant argues that the evidence was not sufficient to find her ordinarily negligent. We disagree. It is well-established that circumstantial evidence and reasonable inferences arising from that evidence may be sufficient to prove the elements of a crime. *People v Nelson*, 234 Mich App 454, 459; 594 NW2d 114 (1999). In this case, the jury could have reasonably

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

inferred from the evidence that defendant was ordinarily negligent for failing to observe the eighty-three-year-old pedestrian, Lewis Stone, before he was struck.

The evidence, considered in a light most favorable to the prosecutor, was sufficient for a rational trier of fact to conclude that defendant should have observed Stone before striking him because: (1) defendant changed two lanes at a speed of twenty-five to thirty miles per hour, (2) Stone, walking in a manner consistent with his age, had ample time to cross both the center left-turn lane and the inner lane, (3) Stone crossed the entire length of defendant's minivan before he was struck, (4) Stone attempted to run when he saw the minivan in front of him, (5) a passenger in the vehicle ahead of defendant's minivan, Kathleen Strother, had ample time to watch Stone walk across the left-turn center lane and enter the inner lane, and (6) Strother had enough time to turn her head twice to watch Stone cross in front of defendant's minivan, tell her husband that Stone was going to get hit, and then watch the accident unfold.

On appeal, defendant offers three exculpatory "obstructed view" explanations for not seeing Stone before she struck him. However, these alleged explanations do not negate the conclusion that the evidence presented at trial was sufficient to support a negligent homicide conviction. Further, defendant's daughter, Riffat, a front-seat passenger, testified that there were no cars immediately ahead of Riffat to obstruct her view of the entire road as the minivan turned and then straightened onto Racho. Riffat also testified that an Art Van sign did not obstruct her view of Racho once she passed the sign, before turning onto Racho. The Strothers' testified that when they passed Stone, he was still in the Racho center left-turn lane. This testimony could lead the jury to reasonably infer that defendant's view of Stone was not blocked because he still had to reach the inner lane after the Strothers passed him. The jury also could have reasonably inferred that defendant changed two lanes before she entered into that inner lane and the amount of time required for Stone to cross was more than required for a driver to look back to change lanes twice. In sum, the evidence was sufficient to support the jury's conclusion that defendant was ordinarily negligent.

Defendant also argues that the jury verdict is against the great weight of the evidence. We disagree. Defendant failed to move for a new trial on this ground; therefore, we review for plain error affecting defendant's substantial rights. See *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999); *People v Winters*, 225 Mich App 718, 729; 571 NW2d 764 (1997).

Defendant's contention that the jury verdict was against the great weight of the evidence is premised on the same arguments she raised regarding the sufficiency of the evidence, and this Court rejects them for the same reasons. Accordingly, this claim was forfeited. *Carines*, *supra* at 763.

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Mark J. Cavanagh
/s/ Roman S. Gribbs